APPENDIX "A".

Memorandum.

United States Court of Appeals for the Ninth Circuit.

United States of America, Plaintiff-Appellee, v. Sulo Frederick Jansson, Defendant-Appellant. No. 81-1050 D.C. No. CR 80-972(A)-2-LTL.

United States of America, Plaintiff-Appellee, v. Edward Shapiro, Defendant-Appellant. No. 81-1051 D.C. No. CR 80-977(A)-3-LTL.

Filed, June 22, 1982.

Appeal from the United States District Court for the Central District of California, Lawrence T. Lydick, District Judge, Presiding. Argued and Submitted May 5, 1982.

Before: BROWNING, Chief Judge, TANG and FARRIS, Circuit Judges.

1. *Arson*

The prosecutor's statements and the items of evidence suggestive of arson did not implicate defendants as perpetrators of the arson. The evidence was relevant because it was probative of the extent and nature of the fire and the probability that the fire would have damaged merchandise at the far end of the warehouse. The comments attributed to Jansson were relevant because they indicated a willingness to take advantage of a fire to defraud the insurance company.

Even if we assumed these statements and the items of evidence should not have been before the jury, taken together they were *de minimis* and non-prejudicial.

2. *Closing Argument*

Most of the alleged misstatements by the prosecutor fell well within the range of reasonable argument from the facts. Those that did not were insignificant; there is no showing

of prejudice. The district court's refusal to order the statements stricken or grant a mistrial absent objection did not rise to the level of plain error.

The prosecutor did not improperly attack defense counsel's credibility. The prosecutor's comments were a reasonably civil disagreement about the import of Watson's testimony.

3. *Evidence of Shapiro's Guilt*

There was sufficient evidence to permit the jury to convict Shapiro. Several witnesses established his presence and significant role in activity relating to the submission of the claim, and Walter Farr testified that Shapiro participated directly in the process of selecting undamaged merchandise to be claimed as damaged. The jury was entitled to believe Farr and to infer that Shapiro was a knowing and active participant in the fraud.

4. *Shapiro's Failure to Testify*

The district court correctly ruled that no reasonable jury would have interpreted the prosecutor's statements as comments on Shapiro's failure to testify.

AFFIRMED.

APPENDIX "B".

Order.

United States of Appeals for the Ninth Circuit.

United States of America, Plaintiff-Appellee, v. Sulo Frederick Jansson, Defendant-Appellant. No. 81-1050.

United States of America, Plaintiff-Appellee, v. Edward Shapiro, Defendant-Appellant. No. 81-1051.

Filed, July 28, 1982.

Before: BROWNING, Chief Judge, TANG and FARRIS, Circuit Judges.

The petitions for rehearing in the above cases are denied.

APPENDIX "C".

United States Constitution, Fifth Amendment:

No Person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX "D".

United States Constitution, Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, and by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPENDIX "E".

Federal Grand Jury, Central District of California.

Proceedings had before the Grand Jury of the United States of America, in and for the Central District of California, at United States Courthouse, 312 North Spring Street, 13th Floor, Los Angeles, California, on *Thursday, September 18, 1980.*

PRESENT: HENRY H. ROSSBACHER, Assistant United States Attorney.

WITNESSES: JAMES DEAN WATSON, ALLEN LONGHOFER, WILLIAM F. FRANK, SR., MAURICE McKISSICK.

REPORTED BY: LOIS SARKISIAN, CSR No. 4071, RPR-CP.

Q. Had there been any discussion in Cal Stereo of fire sales prior to March of 1978?

A. I think maybe jokingly.

Q. Why don't you tell us who told the jokes and about what and when, if you remember.

A. Those types of things probably would have been discussed most likely in the corporate meetings, and I would say that probably Fred Jansson would have jokingly said that.

Q. That a fire sale would be a good thing?

A. Yeah.

Q. *Did he, in fact, say that*?

A. *I think rather than saying a fire sale would have been a good thing he insinuated that Puff the Magic Dragon was always a last way out, but I don't really think he was serious.*

Q. *Did he ever use the phrase "Puff the Magic Dragon?"*

A. *I think so.*

Q. Who else would have been present when he used that phrase?

A. Most likely, not remembering an exact meeting Jerry Kuhn and Ed Shapiro.

Q. You do not remember an exact meeting *but you do remember that Mr. Jansson used that phrase*?

A. *I just remember that he used to insinuate something about fire.* [Emphasis supplied]